

**JEREMY FARRELL  
CORPORATION COUNSEL**

Jersey City Law Department  
City Hall-280 Grove Street  
Jersey City, New Jersey 07302  
Telephone (201) 547-5187

Attorney for Defendants City of Jersey City, Steve Fulop, Robert J. Kakoleski, James Shea,  
Philip Zacche and Joseph Connors

---

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DAVID GOLDRICH	:	Civil Action No. 15-cv-885 (SDW)(SCM)
	:	
Plaintiff(s)	:	
v.	:	
	:	
CITY OF JERSEY CITY, STEVEN	:	
FULOP, in his individual and official	:	
capacities, ROBERT KAKOLESKI,	:	
In his individual and official	:	<b>ANSWER TO COMPLAINT AND</b>
capacities, JAMES SHEA, in his	:	<b>AFFIRMATIVE DEFENSES</b>
individual and official capacities,	:	
PHILIP ZACCHE, in his individual	:	
and official capacities, JOSEPH	:	
CONNORS, in his individual and	:	
official capacities	:	
	:	
Defendant(s)	:	

---

Defendants, City of Jersey City, Steve Fulop, Robert J. Kakoleski, James Shea, Philip  
Zacche and Joseph Connors (collectively “Defendants”) by way of Answer to Plaintiff’s  
Complaint, state that:

**INTRODUCTION**

1. Defendants are not required to respond to the allegations in this paragraph, which state  
only legal conclusions. To the extent any factual allegations are made, Defendants deny these  
allegations.

2. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny these allegations.

### **JURISDICTION**

3. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

4. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

5. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

### **VENUE**

6. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

### **PARTIES**

7. Defendants admit only that Plaintiff is currently a Police Officer for the Jersey City Police Department. Defendants lack the knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

**FACTS**

14. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
15. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
16. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
17. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
18. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
19. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
20. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
21. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
22. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
23. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
24. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
25. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
26. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
27. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

28. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

29. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

30. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

31. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

32. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

33. Denied.

34. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

35. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

36. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

37. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

38. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth to such allegations.

39. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

40. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

41. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

42. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

43. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

44. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

45. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

46. Denied.

47. Denied.

48. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

49. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

50. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

51. Denied.

52. Denied.

53. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

54. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

55. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

56. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

57. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

58. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

59. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

60. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

61. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

62. Denied.

63. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

64. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

65. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

66. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

67. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

68. The answering Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

69. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

71. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

**COUNT I**  
**PLAINTIFFS V. ALL INDIVIDUAL DEFENDANTS**  
**42 U.S.C. § 1983**  
**FIRST AMENDMENT VIOLATIONS**

72. Defendants re-allege their prior responses as if fully set forth and reiterated.

73. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

74. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

75. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

**WHEREFORE**, Defendants demand judgment dismissing plaintiff's Complaint with prejudice, awarding costs and reasonable counsel fees and costs and such other relief as the Court deems equitable and just.

**COUNT II**  
**PLAINTIFF V. CITY OF JERSEY CITY**  
**VIOLATION OF 42 U.S.C. § 1983**

76. Defendants re-allege their prior responses as if fully set forth and reiterated.

77. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

78. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

**WHEREFORE**, Defendants demand judgment dismissing plaintiff's Complaint with prejudice, awarding costs and reasonable counsel fees and costs and such other relief as the Court deems equitable and just.

**COUNT III**  
**PLAINTIFF V. ALL DEFENDANTS**  
**VIOLATION OF CEPA N.J.S.A. 34:19**

79. Defendants re-allege their prior responses as if fully set forth and reiterated.

80. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

81. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

82. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

83. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

84. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

**WHEREFORE**, Defendants demand judgment dismissing plaintiff's Complaint with prejudice, awarding costs and reasonable counsel fees and costs and such other relief as the Court deems equitable and just.

**COUNT IV**  
**PLAINTIFF V. ALL INDIVIDUAL DEFENDANTS**  
**COMMON LAW CONSPIRACY**

85. Defendants re-allege their prior responses as if fully set forth and reiterated.

86. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, defendants deny the truth of such allegations.

87. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.



**WHEREFORE**, Defendants demand judgment dismissing plaintiff's Complaint with prejudice, awarding costs and reasonable counsel fees and costs and such other relief as the Court deems equitable and just.

**COUNT V**  
**PLAINTIFF V. ALL DEFENDANTS**  
**VIOLATION OF NJCRA**

88. Defendants re-allege their prior responses as if fully set forth and reiterated.

89. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

90. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

91. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants admit the truth to such allegations.

92. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

93. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

94. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

95. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

96. Defendants are not required to respond to the allegations in this paragraph, which state only legal conclusions. To the extent any factual allegations are made, Defendants deny the truth of such allegations.

**WHEREFORE**, Defendants demand judgment dismissing plaintiff's Complaint with prejudice, awarding costs and reasonable counsel fees and costs and such other relief as the Court deems equitable and just.

**AFFIRMATIVE DEFENSES**

1. The complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred by the statute of limitations. As well as equitable doctrines of waiver, laches and/or estoppel.
3. Plaintiff failed to exhaust administrative remedies.
4. Plaintiff's damages were caused by Plaintiff's own actions or inactions.
5. Defendants are immune from liability under the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et. seq.
6. Defendants are entitled to qualified immunity for all actions taken under the circumstances of this case and the factual allegations made in this Complaint.
7. Defendants are entitled to absolute immunity for all actions taken under the circumstances of this case and the factual allegations made in this Complaint.
8. The conduct of Defendants did not deprive the plaintiffs of any rights guaranteed under the Constitution or the laws of the United States or the State of New Jersey.
9. The Complaint is barred, in whole or in part, because Defendants at all times acted in good faith, satisfied their legal duties and acted prudently and as a reasonable person would in like circumstances. To the extent Defendants may have engaged in any of the conduct that Plaintiff has alleged, that conduct was justified and was undertaken with proper legal cause, in good faith, and with legitimate non-discriminatory and non-retalitory motives.
10. Defendants state that they maintained a policy prohibiting discrimination/retaliation in the workplace and a procedure for the resolution of complaints alleging discrimination or retaliation. Defendants state that, at all times, they acted promptly and effectively in response to any complaints of discrimination or retaliation asserted by Plaintiffs.

11. The Complaint is barred, in whole or in part, because Defendants exercised reasonable care to prevent and to correct promptly any allegedly discriminatory or retaliatory conduct, and because Plaintiff unreasonably failed to properly take advantage of any preventative or corrective opportunities provided by Defendants or to avoid harm otherwise.

12. To the extent that Plaintiff engaged in misconduct during his employment that would have resulted in any of the actions complained of had Defendants been aware of such misconduct, any damages plaintiff claims must cease as of the date Defendants learned of such misconduct.

13. Plaintiff's alleged damages are barred, in whole or in part, by his failure to mitigate damages and by the doctrine of avoidable consequences.

14. Defendants assert that the damages alleged by Plaintiff, if any, were the result of conditions which were unrelated to any conduct or omission they committed.

15. Plaintiff is not entitled to punitive damages because Defendants' alleged actions were not willful or reckless, and were taken in good faith.

16. To the extent Plaintiff's demand for punitive damages is excessive, it violates the Due Process Clauses of the state and federal constitutions.

17. To the extent that plaintiff claims a violation of public policy or violation of N.J.S.A. 34:19, his claim fails because he did not have a reasonable belief that Defendants engaged in a violation of any public policy or similar law, statute, regulation, rule or resolution as required to state a claim.

18. Defendants deny all other allegations in the Complaint that are not specifically admitted or otherwise responded to in this Answer.

#### **JURY TRIAL DEMAND**

Defendants hereby demands a trial by jury on all issues so triable.

**JEREMY FARRELL**  
**CORPORATION COUNSEL**  
Attorney for Defendants

s/Scott W. Carbone  
Scott W. Carbone  
Assistant Corporation Counsel

Dated: February 25, 2015

**CERTIFICATION OF COUNSEL UNDER LOCAL CIVIL RULE 11.2**

I, Scott Carbone, Assistant Corporation Counsel, counsel for Defendants, certify that, based upon the information currently in my possession, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration or administrative proceeding.

s/Scott W. Carbone

Scott W. Carbone

Assistant Corporation Counsel

Date: February 25, 2015

SWC/dc